IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2204 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANGAJI GOKALJI MAJIRANA A REAL BROTHER OF THE DETANEU

Versus

DISTRICT MAGISTRATE

Appearance:

MR MB FAROOQUI for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 19/04/2000

ORAL JUDGEMENT

1. District Magistrate, Banaskantha, at Palanpur, detained one Rameshji Gokalji Majirana of Deesa, under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), while exercising powers under Section 3(1) of the said Act by

passing an order on August 16, 1999. The petition is preferred by brother of the detenu, Mangaji Gokalji Majirana.

2. The detaining authority took into consideration five offences registered against the detenu with Deesa City Police Station for offences punishable under various sections of Indian Penal Code, Bombay Police Act and Arms Act. The detaining authority found that the activities of the detenu are detrimental to public order, his activities are that of a dangerous person and, therefore, he is required to be immediately prevented from pursuing his illegal and anti-social activities. The detaining authority, before passing the order detaining the petitioner under the PASA Act, considered the possibility of resorting to less drastic remedies under ordinary laws.

3. The petitioner challenges the order of detention on various grounds. Mr. Farooqui submitted that there is delay in passing the order. According to him, the last offence in which the petitioner is involved relates to June 29, 1999, wherein the petitioner came to be enlarged on bail. He submitted that the order is passed on August 16, 1999, i.e. after one month and 20 days and, therefore, there is a delay. He submitted that affidavit in reply is not filed by the respondents and no attempt is made to explain this delay.

3.1 Mr. Farooqui submitted further that the cases relied upon by the detaining authority are stale, pending trial and the authority, therefore, ought not to have relied upon them particularly when the detenu has been bailed out in all the cases.

3.2 Mr. Farooqui submitted that there is nothing to indicate any disturbance to public order. There are no statements of witnesses to indicate that there was disturbance to public order. The subjective satisfaction of the authority, therefore, is based on insufficient material. Mr. Farooqui relied on the decision of the Apex Court in the case of Pradeep Nilkanth Paturkar v. S. Ramamurthi & Ors., AIR 1994 SC 656.

3.3 Mr. Farooqui submitted that there is improper exercise of privilege under Section 9(2) of the PASA Act, which has resulted into infringement of right of the detenu under Article 22(5) of the Constitution. He, therefore, submitted that the petition may be allowed.

4. Mr. K.T. Dave, learned Assistant Government

Pleader, has opposed this petition.

5. Considering rival side contentions, at the outset, it may be noted that none of the contentions raised by Mr. Farooqui can be accepted except that there is no material to indicate disturbance to public order. In fact, the contention regarding improper exercise of privilege under Section 9(2) of the PASA Act is not a correct and legally available contention. Despite threadbare perusal of the grounds of detention, exercise of powers under Section 9(2) of claiming privilege is not found to be in existence. The petitioner, therefore, by raising this point in the petition and the learned advocate for the petitioner by arguing this point have approached the Court with a wrong plea and wrong contention.

6. So far as the contention regarding delay is concerned, it may be noted that the order is passed on August 16, 1999 and, admittedly, the petitioner was bailed out lastly on June 29, 1999. Therefore, at the most, there is time gap of one month and 20 days between last date of offence and the order of detention. During this time, the sponsoring authority was required to collect material, prepare the proposal and place it before the detaining authority. The detaining authority was to undertake the exercise of considering the papers and then pass the order. In view of this Court, therefore, the time consumed between two dates totalling to one month and 20 days cannot be considered as inordinate delay for which explanation would be required. It cannot be said that the order is passed in absence of livelink between the offending act and the order of detention and, therefore, absence of explanation for this period cannot be taken to vitiate the order of detention. In this regard, reference may be made to a decision of a Division Bench of this Court in the case of Osman Ali Khatki v. Commissioner of Police, Rajkot, 1994(1) GLH 512. Against this, Mr. Farooqui has placed reliance on the decision in the case of Pradeep Nilkanth Paturkar (supra). It may be noted that the Apex Court observed that delay is required to be explained. However, it may also be noted that, in that case, the nature of delay was different. There was delay of about four months even after making of proposal by the sponsoring authority and, therefore, the observations were made. In the instant case, there is a gap of one month and 20 days between the last offence and the order of detention during which the entire exercise is undertaken and, therefore, in view of this Court, there is no inordinate delay which is required to be explained and, therefore, the contention

raised on behalf of the petitioner cannot be accepted.

7. Regarding insufficiency of material for basing a subjective satisfaction about the petitioner being a dangerous person, it may be noted that, as per settled proposition of law, this Court, while entertaining a petition under Article 226 of the Constitution, is supposed not to enter into the arena of sufficiency or insufficiency of material for arriving at the subjective satisfaction by the detaining authority and that contention cannot be accepted.

8. However, if the grounds of detention are seen, the detention order is passed on five offences registered against the detenu. The compilation of papers which were supplied to the detenu is produced before this Court. On going through the compilation, it is found that all the five offences relate more or less to individual incidents and they do not reflect disturbance to public order. Besides this, many of the documents which are supplied to the detenu are found to be not legible. It was urged by learned Assistant Government Pleader, Mr. Dave, that City Police Station C.R. No.282 of 1998 can be considered as an incident disturbing public order. In this regard, it may be noted that the copy of the F.I.R. is not legible. Apart from this, the other incidents positively do not relate to disturbance to public order and, therefore, this particular offence will be the sole offence which can be considered to have disturbed public order. The conclusion of the detaining authority that the petitioner is a dangerous person on basis of a single incident, therefore, can be considered to be improper or legally not genuine since plurality of such incidents are required for branding a particular person as a dangerous person. Under the circumstances, the contention raised by Mr. Dave, learned Assistant Government Pleader, cannot be accepted.

9. In view of the above discussion, the petition deserves to be allowed for the reasons that the incidents relied upon by the detaining authority do not indicate disturbance to public order, that the documents supplied are not legible and that the satisfaction arrived at by the detaining authority that the detenu is a dangerous person is not well founded.

10. In the result, the petition is allowed. The impugned order of detention dated August 16, 1999, passed against the detenu is hereby quashed. The detenu-Rameshji Gokalji Majirana is ordered to be set at liberty forthwith, if not required in any other matter.

Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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